

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH JONES	: CIVIL ACTION
	:
v.	:
	:
PHILADELPHIA HOUSING AUTHORITY,	
et. al.	: NO. 99-0067

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

October 19, 1999

The sole remaining issue in this action is the hourly rate at which plaintiff's counsel are to be compensated for services rendered in a successful action against the Philadelphia Housing Authority on behalf of a resident. Plaintiff's counsel are public interest attorneys.¹

BACKGROUND

Plaintiff, a resident of the Philadelphia Housing Authority ("PHA"), filed a grievance with PHA in 1998 to obtain a four bedroom unit for herself and four children who lived with her. After a grievance arbitration hearing, an award was entered on August 21, 1998 ordering, inter alia, PHA to transfer plaintiff to an appropriate sized unit. See Order, March 19, 1999.

When PHA failed to comply with the August 21 award, plaintiff filed an action in federal court pursuant to 42 U.S.C. §§ 1437 and 1983.² After the federal action was filed, PHA

¹ "Plaintiff's counsel" as used herein includes Michael Donahue, Esq., of Community Legal Services, and David Rudovsky, Esq.

² Housing participants have a cause of action under 42 U.S.C. § 1983 to address violations of federal housing laws by

complied with all of the provisions of the August 21 arbitration award except for the provision requiring PHA to transfer plaintiff to an appropriately sized apartment. See Order, March 19, 1999.

On March 19, 1999, the parties settled the remaining issue by a PHA guarantee that plaintiff would be offered the next available appropriately sized apartment. Counsel for plaintiff subsequently moved this court for an award of attorneys fees pursuant to 42 U.S.C. § 1988.³

DISCUSSION

To recover attorneys fees under § 1988, an attorney must establish that: 1) he represented a prevailing party; 2) the hours expended were reasonable; and 3) the hourly rate requested is reasonable. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). At a hearing on May 25, 1999, PHA conceded that plaintiff was the prevailing party. The court decided, based on the parties' briefs and arguments, that the hours expended by plaintiff's counsel were reasonable.⁴ Whether the hourly rate

state officials. See Wright v. Roanoke Redevelopment and Housing Authority, 479 U.S. 418 (1987).

³ § 1988(b) provides "[i]n any action . . . to enforce a provision of section . . . 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs."

⁴ The court found that the work performed by plaintiff's counsel had been useful and of a type ordinarily necessary to secure the final result obtained- in this case, a complete recovery for plaintiff. See Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 561 (1986).

sought by plaintiff's counsel is reasonable is the remaining issue.

The reasonable hourly rate of plaintiff's counsel must be calculated according to the prevailing market rates in the community. See Smith v. Philadelphia Housing Auth., 107 F.3d 223, 225 (3d Cir. 1997). "The plaintiff bears the burden of producing sufficient evidence of what constitutes a reasonable market rate for the essential character and complexity of the legal services rendered in order to make out a prima facie case." Id.

Plaintiff's counsel argues that two surveys commissioned by Community Legal Services and conducted by Altman Weil Pensa ("Altman"), a legal management consulting firm, establish the appropriate hourly rates. These surveys support the new CLS fee schedule on which plaintiff's counsel base their claims. The first survey, conducted in 1996, reported that attorneys in the Philadelphia region with 21 or more years of experience billed an average hourly rate of \$265.⁵ The second survey, conducted in 1998, reported that attorneys admitted between 1977 and 1981 billed an average hourly rate of \$272. That survey also reported that attorneys admitted between 1967 and 1971 billed an average hourly rate of \$327.

⁵ Mr. Donahue, plaintiff's trial counsel, was admitted to practice in 1977 and has approximately 21 years of experience. Mr. Rudovsky, who appeared on the matter of attorneys fees, was admitted to practice in 1967 and has approximately 32 years of experience.

PHA criticizes the Altman report because it assigns hourly rates to attorneys based upon years of experience, irrespective of the nature of the particular legal services being offered. PHA argues that the survey fails to distinguish between hourly rates charged for work on "routine issues [as are] present in this case" and hourly rates charged for "complex action[s] such as products liability . . . or securities fraud lawsuit[s]." PHA Brief, p. 6.

The court finds defendant's position insulting to the value of community legal services. In Philadelphia, public interest attorneys provide a critical and essential public service of high quality, in the face of enormous financial and social constraints. Public interest law exacts an emotional and financial toll on attorneys that lawyers involved in "complex securities action[s]" rarely experience. The poor and ignorant are entitled to- and must receive- the same quality of legal service as those who are more affluent.

PHA also argues that case law supports a maximum rate of \$150 per hour for plaintiff's counsel. PHA relies on a series of cases, decided in this court between 1994 and 1998, where rates were lowered to \$150. However, since early 1999, our court has accepted the new CLS schedule, as supplemented by the Altman report, in the award of attorneys fees. See Bryant v. PHA, No. 97-7478 (Feb. 18, 1999); Wesby v. PHA, No. 97-7403 (Feb. 17, 1999). In Bryant and Wesby, Mr. Donahue was awarded \$265 per hour in accordance with the CLS fee schedule.

Attorneys practicing with legal services organizations may set their hourly rates according to the prevailing rate for other lawyers who have reasonably comparable skill, experience, and reputation in the legal community in which they practice. See Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984). Public interest attorneys as a group have comparable skills, experience and reputation as other lawyers. Provided the public interest attorney has good standing, skill, accomplishment, and reputation in his field, the court may determine the prevailing market rate based on years of experience.

Mr. Donahue, having practiced public interest law for his entire career, has practiced in the field of public housing since 1987. Mr. Donahue's practice includes complex federal litigation, including class actions. He has appeared in federal court many times on a variety of public housing matters. Mr. Rudovsky's practice includes civil rights and civil liberties litigation. He has practiced public interest law for his entire career, and has an outstanding reputation for skill and experience. This court has no reason to doubt Messrs. Donahue's and Rudovsky's experience, skill and good standing in the legal community.

Based on the factual record before the court, the two Altman reports are held reliable and adequate for determining the prevailing market rate for lawyers in the community. See Smith, 107 F.3d at 226. Messrs. Donahue and Rudovsky have sufficient skills, experience and reputation to claim \$265 and \$320 per

hour, respectively.

CONCLUSION

Messrs. Donahue and Rudovsky are entitled to \$265 and \$320 per hour, as requested. These are reasonable market rates based upon the character, complexity and importance of the legal services rendered.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH JONES	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILADELPHIA HOUSING AUTHORITY,	:	
et. al.	:	NO. 99-0067

ORDER

AND NOW this 19th day of October, 1999, upon consideration of the attached memorandum, it is **ORDERED** that:

Plaintiff's Motion for Attorneys' Fees is **GRANTED** and fees in the amount of \$4,700 are awarded to Community Legal Services, Inc. and that fees in the amount of \$3,616 are awarded to David Rudovsky, Esq., payable by defendant Philadelphia Housing Authority.

Norma L. Shapiro, S.J.